

MT LEGISLATIVE HISTORY

Chapter 151 1981

Bill H (S) 144

Original bill & hist. ✓C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Nov 11 ✓C

Hearing Date(s) Jan 29 ✓C

Nov 12 ✓C

Jan 30 ✓C

 C

 C

 C

 C

Date Out Nov 12 ✓C

Jan 30 ✓C

Did this bill originate in an interim committee? Yes No

Committee

Report

SENATE BILL NO. 144

INTRODUCED BY HAZELBAKER

BY REQUEST OF THE DEPARTMENT OF REVENUE

IN THE SENATE

January 15, 1981	Introduced and referred to Committee on Judiciary.
January 30, 1981	Committee recommend bill do pass as amended. Report adopted.
January 31, 1981	Bill printed and placed on members' desks.
February 2, 1981	Second reading, do pass as amended.
February 3, 1981	Correctly engrossed.
February 4, 1981	Third reading, passed. Transmitted to House.

IN THE HOUSE

February 5, 1981	Introduced and referred to Committee on Judiciary.
March 12, 1981	Committee recommend bill be concurred in as amended. Report adopted.
March 14, 1981	Second reading, concurred in.
March 17, 1981	Third reading, concurred in as amended. Ayes, 26; Noes, 0.

IN THE SENATE

March 18, 1961

Returned from House with amendments.

March 19, 1961

Second reading, amendments concurred in.

March 21, 1961

Third reading, amendments concurred in. Ayes, 49; Nays, 0. Sent to enrolling.

Reported correctly enrolled.

1 *Senate* BILL NO. *144*
2 INTRODUCED BY *Paylor*
3 BY REQUEST OF THE DEPARTMENT OF REVENUE
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE THE CRIMINAL
6 OFFENSE OF FALSE CLAIMS TO PUBLIC AGENCIES AND TO CREATE
7 CIVIL PENALTIES FOR PERSONS MAKING FALSE CLAIMS TO PUBLIC
8 AGENCIES."
9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11 Section 1. False claims to public agencies. (1) A
12 person commits an offense under this section if he knowingly
13 presents for allowance or for payment any false or
14 fraudulent claim, bill, account, voucher, or writing to any
15 public agency or its contractors or to any public servant
16 authorized to allow or pay the claim if genuine.
17 (2) (a) Except as provided in subsection (2)(b), a
18 person convicted of an offense under this section shall be
19 fined not to exceed \$500 or imprisoned in the county jail
20 for a term not to exceed 6 months, or both.
21 (b) If false or fraudulent claims are submitted as
22 part of a common scheme or if the value of the claim or the
23 aggregate value of all claims exceeds \$150, a person
24 convicted of an offense under this section shall be fined
25 not to exceed \$10,000 or imprisoned in the state prison for

1 a term not to exceed 10 years, or both.
2 Section 2. Liability for false claims. (1) A person
3 who knowingly presents or causes to be presented a false,
4 fictitious, or fraudulent claim for allowance or payment to
5 any state agency or its contractors forfeits the claim,
6 including any portion that may be legitimate, and in
7 addition is subject to a penalty of \$2,000 plus double the
8 damages sustained by the state as a result of the false
9 claim, including all legal costs.
10 (2) The forfeiture and the penalty may be sued for in
11 the same suit.
12 Section 3. Codification instruction. (1) Section 1 is
13 intended to be codified as an integral part of Title 45,
14 chapter 7, part 2, and the provisions of Title 45, chapter
15 7, part 2, apply to section 1.
16 (2) Section 2 is intended to be codified as an
17 integral part of Title 17, chapter 3, part 2, and the
18 provisions of Title 17, chapter 3, part 2, apply to section
19 2.

-End-

-2-

INTRODUCED BILL
03 144

FORTY-SEVENTH LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
SB 83	1/08/81	1/14/81	1/19/81			1/19/81			
SB 89	1/09/81	1/14/81	1/20/81	1/20/81					
SB 94	1/10/81	1/15/81	1/15/81	1/15/81					
SB 111	1/13/81	1/19/81	1/20/81			1/20/81			
SB 112	1/13/81	1/19/81	2/11/81			2/11/81			
SB 117	1/14/81	1/20/81	1/23/81			1/23/81			
SB 119	1/14/81	1/22/81	1/23/81	1/23/81					
SB 120	1/14/81	1/22/81	2/07/81			2/07/81			
SB 144	1/15/81	1/29/81	1/30/81			1/30/81			
SB 145	1/15/81	1/23/81	1/23/81	1/23/81					
SB 149	1/16/81	1/23/81	1/30/81			1/30/81			
SB 159	1/16/81	transferred to Fish & Game							
SB 161	1/16/81	1/26/81	2/04/81			2/04/81			
SB 162	1/16/81	1/26/81	1/30/81			1/30/81			
SB 164	1/17/81	2/02/81	2/07/81			2/07/81			
SB 171	1/17/81	2/02/81	2/04/81	2/04/81					

A separate sheet for Senate, House Bills, and Resolutions.

the bill would put the insurance company in a position of either paying the claim, whether they felt it was fair or not, or denying the claim altogether to avoid the penalty. He said that it would force cases into court that possibly could have been settled out of court if more time had been available. He also felt that if a case were found to be frivolous attorney fees should be recovered on the plaintiff.

Glen Drake, Helena attorney representing the American Insurance Association, said that Section 2 would have to be redone, and that under Section 4 granting attorney's fees would include uninsured motorist claims, third party claims, etc.

Bob James, Great Falls attorney representing State Farm Insurance Co., spoke in opposition to the bill, saying that under subsection (2) if the claim is denied the consumer would have to get a lawyer, whereas perhaps it could have been settled by an insurance adjuster. This would represent an added expense to the consumer.

Bill Romine, of the Montana Land Title Association, felt that the bill might even have the effect of pulling title insurance into its range of effectiveness. For that reason he opposed the bill.

Loy Grimes, Farmers Insurance Group, presented a position paper against the bill (marked Exhibit B and attached to these minutes) and stated that the parent companies handle the time problem adequately over all, and that if specific companies are at fault, then they should be singled out and dealt with individually.

In closing, Senator Towe submitted to the committee a copy of Wyoming statutes similar to his proposed bill (marked Exhibit C and attached to these minutes). He said that in cases where a quick settlement is not indicated permission can be granted to grant additional time. He agreed to bring in an amendment which would include Blue Shield and Blue Cross.

Jess Starnes, speaking for the Montana Insurance Guaranty Association, said that while the intent might be good, the law is bad.

Senator Mazurek expressed a concern that the bill might encourage court disputes over intangible damages such as pain and suffering, but Senator Towe didn't feel that this would be a problem under the bill.

CONSIDERATION OF SENATE BILL 144:

AN ACT TO CREATE THE CRIMINAL OFFENSE
OF FALSE CLAIMS TO PUBLIC AGENCIES AND

TO CREATE CIVIL PENALTIES FOR PERSONS
MAKING FALSE CLAIMS TO PUBLIC AGENCIES.

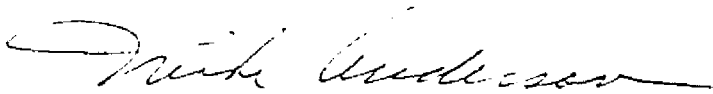
Senator Hazelbaker presented the bill and read from a letter which outlined the problems which had necessitated this bill, written by the Medicaid Fraud Control Bureau of the Department of Revenue.

Chip Erdmann, of the Medical Fraud Control Bureau, gave the committee a fact sheet (marked Exhibit D and attached to these minutes) on the bill.

Senator Crippen said that he felt the purpose of the bill was mainly to hit fraudulent claims in the medical aid area, and that he felt the bill was too broad and far reaching and should be narrowed down. He also felt that the term "knowingly presents" should be changed to read "knowingly and purposely presents". Mr. Erdmann agreed that "purposely" could be added.

Senator Mazurek felt that the penalty provision should be changed from "\$2,000" to "up to \$2,000."

After a brief discussion of scheduling of bills, and the further handling of Senate Bill 33, the meeting adjourned.



Senator Anderson
Chairman, Judiciary Committee

SENATE JUDICIARY COMMITTEE

BILL S SB 144
SB 201
SB 203

VISITORS' REGISTER

DATE 1/29/81

Please note bill no.

NAME	REPRESENTING	BILL #	(check one)	
			SUPPORT	OPPC
Don Grimes	Farmers Ins Group	203		X
Joseph Mucian	USF&G Co	203		X
John Zing	Asium State	203		X
R. H. T. [unclear]	E. A. B. [unclear]	203		X
Chip Erdmann	Dept of Revenue	144	X	
Pat Malley	Office of American Ins	203		X
GEORGE T. DEWITT	MONT. FIRE ASSN	203		X
James DeLoach	Law. Dept	203	?	?
Josephine [unclear]	" "	203	?	?
P. L. [unclear]	United Pacific Ins	203		✓
Wes L. Starnes	MT Ins. Co. [unclear]	203		✓
Bob James	State Farm Ins. Co.	203		X
Elmer [unclear]	Am Ins. Co.	203		X
Richard [unclear]	Ind. Int. Agents Assoc	203		
John [unclear]	Mont. T. O. M. A.	201	X	
Tex [unclear]	Mont. 10 M. A.	201	X	
C. T. [unclear]	Mont. 10 M. A.	201	X	
Harold [unclear]	Mont. 10 M. A.	201	X	
Mike [unclear]	M. T. A.	203	X	
[unclear]	MT Bankers Assn	201		X
[unclear]	NORTHWESTERN B. & L.	201		X
[unclear]	Int. Assoc. of Life Underwriters	203		
Steve [unclear]	St. Paul Fire & Marine	203		X
J. Brunne	W. I. F. E.			

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

ROLL CALL

JUDICIARY COMMITTEE

47th LEGISLATIVE SESSION - - 1981

Date 1/29/81

NAME	PRESENT	ABSENT	EXCUSED
Anderson, Mike, Chr. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Olson, S. A. (R)	✓		
Brown, Bob (R)	✓		
Crippen, Bruce D. (R)	✓		
Tveit, Larry J. (R)	✓		
Brown, Steve (D)	✓		
Berg, Harry K. (D)	✓		
Mazurek, Joseph P. (D)	✓		
Halligan, Michael (D)	✓		

Each day attach to minutes.

NAME: Chip Erdmann DATE: 1/29/81

ADDRESS: Medical Fraud Control Bureau
Dept. of Revenue

PHONE: 449-4632

REPRESENTING WHOM? Medical Fraud Control Bureau

APPEARING ON WHICH PROPOSAL: SB 144

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENTS: This bill was proposed by Revenue
to combat fraud in the Medical
area. See attached

Exhibit

DEPARTMENT OF REVENUE

SENATE BILL NO. 144

SB 144 addresses the problem of false claims to government agencies. The Department of Revenue is interested in this area as a result of its involvement in the Medicaid Fraud Program. It should be noted, however, that the proposed legislation is broad sweeping and encompasses all false claims to government agencies. Present criminal laws addressing the false claim question are Sections 45-6-301, MCA, relating to theft, and 45-7-203, MCA, relating to unsworn falsification. The Department has not found these sections to be useful in the area of medicaid fraud. Consequently, the Department has prepared the new language of SB 144.

Section Analysis

Section 1. New Section. This section creates a criminal offense of false claims to public agencies. It is modeled on the California Penal Code, and has been used successfully in medicaid fraud prosecutions. The offense is classified as a misdemeanor or a felony depending on the size of the claim and the existence of a common scheme of deception.

Section 2. New Section. This section establishes a civil remedy in the case of false claim. The section is taken from the Federal False Claims Act. By imposing substantial penalties on the submitter of false claims, it is hoped that the legislation will act as a strong deterrent.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 30, 1981

Page 1.

The sixteenth meeting of the Senate Judiciary Committee was called to order by Mike Anderson, Chairman, on the above date in Room 331, at 10:00 a.m.

ROLL CALL:

All members were present.

DISPOSITION OF SENATE BILL 149:

Reports from the committee members revealed little or no concern on the part of local bankers relative to the passage of this bill. Senator Tveit moved that the bill not pass. His motion failed. Senator Berg moved that the bill be amended on page 1, line 11, by inserting "purposely or" after "who". The motion for the amendment carried. Senator O'Hara moved that the bill DO PASS AS AMENDED, and his motion carried with Senator Tveit's vote being the only opposing one.

DISPOSITION OF SENATE BILL 203:

Senator S. Brown moved that the bill DO NOT PASS, and the motion carried unanimously.

DISPOSITION OF SENATE BILL 201:

Senator Berg moved that the bill DO NOT PASS. Following discussion of the merits of the bill, his motion carried.

FURTHER CONSIDERATION OF SENATE BILL 161:

Ted Doney, representing Petro-Lewis Corp., spoke to the committee about a proposed amendment to Section 63 (marked Exhibit A and attached to these minutes), a savings clause specifically designed to protect existing limited partnerships. Senator Mazurek moved that the amendment pass. His motion carried unanimously. Senators Halligan and Mazurek agreed to work with the Secretary of State's office relative to the fee schedule for filings (marked Exhibit B and attached to these minutes). A letter and memorandum from the Secretary of State (marked Exhibits C and D and attached to these minutes) were presented.

DISPOSITION OF SENATE BILL 144:

Senator S. Brown moved that on page 1, line 12, "purposely

and" be inserted following "he"; and that additional changes be made on page 1, line 15; page 2, line 3; and page 2, line 7. Senator Mazurek moved that these amendments pass, and Senator Crippen's vote was the only dissenting one. Senator Olson moved that the bill DO PASS AS AMENDED, and Senator Crippen's vote was the only one in opposition.

CONSIDERATION OF SENATE BILL 286:

AN ACT TO GENERALLY REVISE THE LAWS
RELATING TO THE PRISONER FURLOUGH
PROGRAM.

Senator Van Valkenburg presented the bill at the request of the Department of Institutions, which is presenting the bill in order to seriously restrict the prisoner furlough program.

Curt Chisholm, Deputy Director of the Department of Institutions, spoke in favor of the bill.

Nick Rotering, legal counsel for the Department of Institutions, said that the present prisoner furlough law is unworkable, and has prompted many lawsuits. He introduced a statement of intent meant to accompany the bill (marked Exhibit E and attached to these minutes). He stated that this bill has the support of the Parole Board.

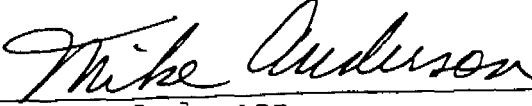
Karen Mikota stated that the League of Women Voters supports the bill, and said that they hoped that the furlough process would be streamlined through its passage.

Senator S. Brown questioned many of the bill's repealers.

DISPOSITION OF SENATE BILL 162:

Senator Mazurek moved four amendments to the bill (illustrated on attached committee report) which were designed to clarify which person contribution may be obtained from and to clarify the fact that the court may apportion the negligence among the parties. The amendments carried unanimously. Senator O'Hara moved that the bill DO PASS AS AMENDED, and his motion carried unanimously.

A motion for adjournment then carried unanimously.



Senator Anderson
Chairman, Judiciary Committee

MR.PRESIDENT.....

We, your committee on JUDIC ARY

having had under consideration

SENATE

Bill No. 144

Respectfully report as follows: That..... SENATE Bill No. 144

be amended as follows:

1. Page 1, line 12.

Following: "he"

Insert: "purposely and"

2. Page 1, line 15.

Following: "agency"

Insert: ", "

Strike: "or its contractors or to any"

Following: "servant"

Insert: "or contractors"

3. Page 2, line 3.

Following: "who"

Insert: "purposely and"

4. Page 2, line 7.

Following: "of"

Insert: "not to exceed"

~~DO PASS~~

And, as so amended

DO PASS

JUDICIARY COMMITTEE

47th Legislature

SENATE BILLS

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
120	Revising the law relating to juries.	2/14/81	Ochsner	3/6/81	Do Pass as Amended 3/10/81	3/10/81
144	Creating the criminal offense of false claims to public agencies.	2/5/81	Hazelbaker	3/11/81	Do Pass as Amended 3/12/81	3/12/81
145	Increasing to \$7500 the value of an estate that may be administered by summary procedure.	1/29/81	Hager	3/6/81	Do Pass 3/9/81	3/9/81
149	Creating the criminal offense of false statement in obtaining an account from a financial institution	2/5/81	Van Valkenburg	3/6/81	Do Not Pass 3/9/81	3/9/81
159	Amending 87-4-101 to define the scope of liability for outfitters.	2/19/81	Anderson	3/9/81	Do Pass as Amended 3/10/81	3/10/81
161	Adopting revisions to the uniform limited partnership act.	2/11/81	Mazurek	3/9/81	Do Pass 3/12/81	3/12/81

MINUTES OF THE MEETING OF THE JUDICIARY COMMITTEE
March 11, 1981

The meeting of the House Judiciary Committee was called to order at 8:00 a.m. in Room 437 of the Capitol by Chairman Kerry Keyser. All members were present except Rep. Huennekens, who was excused. Jim Lear, Legislative Council, was present.

SENATE BILL 144 SENATOR HAZELBAKER, sponsor, stated this bill is to create the criminal offense of false claims to public agencies.

CHIP ERDMANN, Medicaid Fraud - DOR, was in support of the bill.
EXHIBIT 1.

There were no further proponents.

There were no opponents.

SENATOR HAZELBAKER closed the bill.

REP. MATSKO asked why doesn't this fall under fraud. The Senator replied if it is knowingly committed it is fraud.

SENATE BILL 222 SENATOR KOLSTAD, sponsor, stated this bill is to amend 25-10-711 to provide new standards for awarding costs to a party prevailing against the state. It allows the small business to collect court costs, which is one of the recommendations of the Small Businesses last January. In October, 1980, the Equal Access Act was passed.

JANELLE FALLON, Montana Chamber of Commerce, supported the bill. This has been passed on the federal level. It will remove language that says frivolous. The changes would make it more workable. A survey her organization performed showed that 94% of the people support this type of legislation.

ED NURSE, Small Business, stated on the national level this bill passed the Senate and had only 20 votes against it in the House. It will give the small businessman equity.

DAVE GOSS, Billings Chamber of Commerce, stated businessmen support the bill. He stated a case where a car dealer had a complaint filed against him. In the long run it was cheaper for him to pay the complaint than to go to court over it.

LARRY HUSS supported the bill.

MIKE MELOY, Montana Trial Lawyers Association, supported the bill. He felt that "not" on line 9 needs to be reinserted.

There were no further proponents.

DEPARTMENT OF REVENUE

SENATE BILL NO. 144

SB 144 addresses the problem of false claims to government agencies. The Department of Revenue is interested in this area as a result of its involvement in the Medicaid Fraud Program. It should be noted, however, that the proposed legislation is broad sweeping and encompasses all false claims to government agencies. Present criminal laws addressing the false claim question are Sections 45-6-301, MCA, relating to theft, and 45-7-203, MCA, relating to unsworn falsification. The Department has not found these sections to be useful in the area of medicaid fraud. Consequently, the Department has prepared the new language of SB 144.

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Section 2. New Section. This section establishes a civil remedy in the case of false claim. The section is taken from the Federal False Claims Act. By imposing substantial penalties on the submitter of false claims, it is hoped that the legislation will act as a strong deterrent.

Proposed Amendment to SB144.

Delete "purposely and" from line 4, page 2.

The purpose of this proposed amendment is to reestablish the distinction between the burden of proof in criminal and civil actions. In the criminal section (Section one) the burden of proof is "purposely and knowingly". This is the highest burden of proof possible. Historically, the burden of proof in civil cases is lower than that required in a criminal action. This is due, in part, to the fact that a defendant in a civil case does not risk jail and the stigma associated with a criminal conviction.

While amending the criminal section, the Senate Judiciary inserted the "purposely and knowingly" language in the civil section of this bill. The committee did not intend to raise the civil burden of proof to the highest criminal burden of proof level.

VISITORS' REGISTER

HOUSE JUDICIARY

COMMITTEE

**SENATE
BILL**

144

Date 3/11/81

SPONSOR Hazelbaker

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

REP. SEIFERT felt that the two year period was not enough time.

REP. EUDAILY felt that the \$5.00 deduction was steep. REP. IVERSON thought that \$1.00 was not enough to compensate the employer's bookkeeping records yet if it would not exceed \$5.00 it would be justifiable. REP. YARDLEY stated it would be just a payroll deduction. REP. EUDAILY stated once it is set up the deduction would be automatic. Not that much cost would be involved. REP. HANNAH replied it is not just automatic. A bookkeeper would have to keep track of it and it would add more paperwork to the files. REP. BROWN stated this would be at the discretion of the courts.

REP. CURTISS moved to strike 2 years and insert 5 years. She felt this could go back for quite awhile and 2 years might be insufficient to cover it. REP. CURTISS withdrew her motion.

REP. EUDAILY moved to strike section 10 of the bill in its entirety.

REP. BROWN opposed the motion. REP. HANNAH stated the debt would have to be substantial to go after it.

REP. YARDLEY stated that money was the best thing to go after in these type of cases. If a car or television set was confiscated it would have to be sold at the sheriff's sale.

REP. MATSKO stated many people who have the obligation to pay child support do not. The father quits his job and draws welfare and unemployment to avoid paying. REP. BROWN stated if the father was so inclined he would do that anyway.

REP. CURTISS felt the Department of Revenue and SRS would benefit from the bill. It gives them authority to recover. REP. YARDLEY stated when a father is past due on payment the mother goes to a lawyer for help in recovery. The father ends up paying the amount past due yet the mother has to pay some of that money for the attorney's fees. The father wins and the mother loses.

The amendment to delete section 10 of the bill failed with MCLANE, CURTISS and EUDAILY voting for it.

The motion of do pass by REP. BROWN carried with EUDAILY, MCLANE, and CURTISS voting against the motion.

SENATE BILL 144 REP. BROWN moved do pass.

REP. EUDAILY moved to strike "PURPOSELY AND" from page 2, line 5. The motion carried unanimously.

REP. BROWN moved do pass as amended. The motion carried.

SENATE BILL 222 REP. HANNAH moved do pass.

REP. CURTISS moved following "costs" to insert "and attorney's fees" on line 7. The motion carried.

REP. CURTISS moved following "awarded" on line 9 to strike "if" and insert "unless". The motion carried.

REP. EUDAILY moved on page 2, line 15 following "of" to strike "costs" and to insert "attorney's fees". The motion carried.

REP. BENNETT moved to strike ":" after "if" on page 1, line 24 and on page 1, line 25 to strike "(a)". The motion carried.

REP. EUDAILY asked about the fiscal note for the bill. REP. IVERSON stated when the fiscal note was first drawn up it included torts, which according to testimony, involved about 5-10% of the money. REP. EUDAILY thought that could make a difference in the budgets. REP. IVERSON felt this bill would not survive on the present fiscal note.

REP. CURTISS moved to hold the bill until another fiscal note is made. The motion carried.

SENATE BILL 245 REP. BROWN moved do pass.

REP. BENNETT moved to delete section 10. He felt the language conflicts with abortions. Reporting abortions is of no benefit. There is no need for these reports to be made to the state. REP. MATSKO stated that was current law. REP. BENNETT withdrew his motion.

REP. BROWN moved to delete Section 10.

REP. BROWN moved to hold action on the bill. The motion carried.

The meeting adjourned at 10:50 a.m.


KERRY KEYSER, CHAIRMAN